ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

Annual Report

2006

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Mission Statement

The Ontario Civilian Commission on Police Services is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Chair's Message

I am pleased to present the Annual Report for the Ontario Civilian Commission on Police Services for 2006.

This report provides an overview of the Commission's activities for the year. It also includes summaries of hearings conducted throughout the year.

This, again, has been a busy year with respect to hearings held or investigations conducted by our staff. In total, five investigations or fact-finding reviews were commenced or concluded during this calendar year. One fact-finding review is ongoing. As well, we rendered thirteen disciplinary appeal decisions, one section 25 hearing decision, three downsizing decisions, two status decisions and conducted 546 complaint reviews.

This year we continued to work hard to enhance our operational, procedural and policy framework to meet our legislative responsibilities. I would like to thank both staff and members for their efforts in this regard.

Detailed information on all of our proceedings held during the year can be found on our website at www.occps.ca.

Murray W. Chitra, Chair
Ontario Civilian Commission on Police Services

Role of the Commission

The Ontario Civilian Commission on Police Services is an arm's length, quasi-judicial agency of the Ministry of Community Safety and Correctional Services.

The mandate and duties of the Commission are set out in the *Police Services Act.* They are primarily adjudicative in nature and include:

- hearing appeals of police disciplinary decisions;
- adjudicating disputes between municipal councils and police services boards involving budget matters;
- considering requests for the reduction, abolition, creation or amalgamation of police services;
- conducting investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards;
- determining the status of police service members;
- conducting reviews of local decisions relating to public complaints at the request of complainants; and,
- general enforcement relating to the adequacy and effectiveness of policing services.

In Ontario, municipal police services and police services boards are ultimately accountable to the public through the Commission.

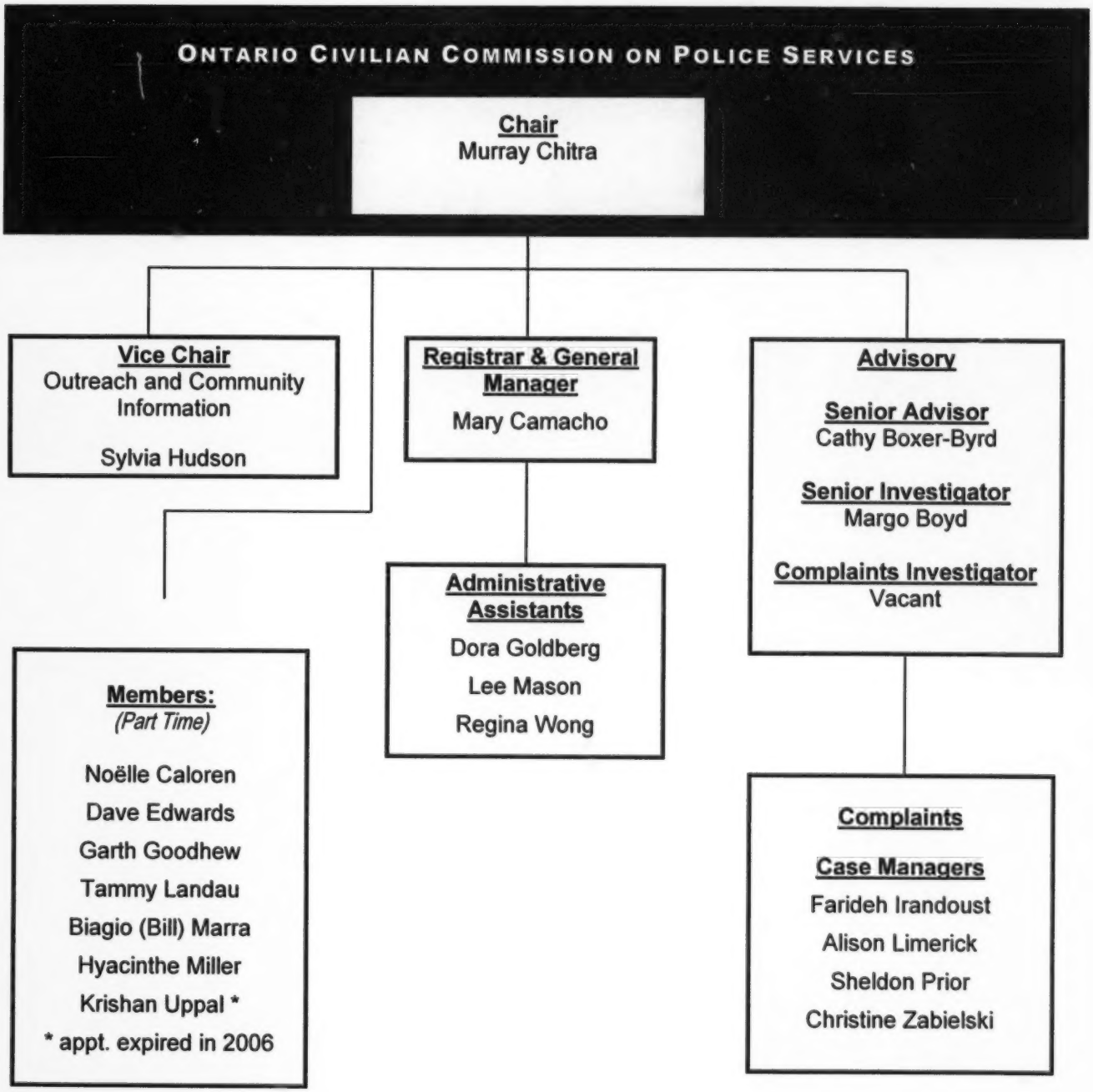
Commission Organization

In 2006 the Commission had a full-time Chair and a Vice-Chair, Outreach and Community Information. In addition, there were 7 part-time members.

Members are normally appointed by Order-in-Council for terms of 3 years. The men and women who serve on the Commission represent a diverse cross-section of professions and communities across Ontario. The work of the Commission is supported by a small core of advisory, investigative and administrative staff.

The entire Commission meets in Toronto monthly. Members also participate regularly on panels to review local police service decisions concerning the classification and investigation of public complaints about the conduct of police officers. They also preside at various types of quasi-judicial proceedings.

ORGANIZATION CHART 2006



Commission Budget 2006

The annual budget for the Ontario Civilian Commission on Police Services for the calendar year 2006/2007 was $1,684,200.

The following is a breakdown of the allocated budget:

ITEM	ALLOCATION ($000)
Salaries & Wages	1,457.70
Employee Benefits	151.90
Transportation & Communications	37.80
Services	27.60
Supplies & Equipment	9.20
Transfer Payments •	
Total	1,684,200

• Statutory Appropriation: Hearings under the *Police Services Act*

Members of the Commission

Murray W. Chitra - Chair

Prior to his appointment to the Chair of the Commission, Mr. Chitra was the Legal Director for the Ontario Insurance Commission (OIC) for four years. As well, Mr. Chitra worked for ten years with the Legal Services Branch of the Ministry of Correctional Services where he served for six years as Legal Director. He was called to the Bar in Ontario in 1980. Mr. Chitra is the former President of the Society of Ontario Adjudicators and Regulators (SOAR) and is currently a Director of the Council of Canadian Administrative Tribunals (CCAT).

Sylvia Hudson - Vice-Chair, Outreach and Community Information

Sylvia Hudson is a past member and Vice-Chair of the Race Relations Committee of a large city Police Services Board. Prior to joining the Commission, Ms Hudson was a member of the Social Benefits Tribunal. Her educational background is in social work, public administration, business and community services. She has many years experience working with community agencies serving youth and individuals at risk.

Noëlle Caloren - Member

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text Employment Law – Solutions for the Canadian Workplace. Ms. Caloren is fluently bilingual.

Dave Edwards - Member

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career he has served on various community organizations and held a number of positions, including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara and the Rotary Club.

Garth Goodhew – Member

Garth Goodhew spent most of his professional career in secondary education in Northern Ontario serving 23 years as a Principal. Throughout his career he served on a variety of boards and agencies, was a member of his Municipalities City Council and chaired the National Candidature Committee of the United Church of Canada. He received the Queen's Silver Jubilee Medal for community service. After leaving secondary education Garth completed 6 years as a Board member of the National Parole Board. At the present time he is a member of the Citizens' Advisory Committee for the Sudbury Region of Correctional Service of Canada.

Dr. Tammy Landau - Member

Tammy Landau is Associate Professor in the School of Criminal Justice at Ryerson University. She has a Ph.D. in Criminology from the Centre of Criminology at the University of Toronto, and has been involved in a wide range of community projects and agencies. Dr. Landau has been a consultant to federal, provincial and local governments on a variety of justice issues. Her research interests include policing, Aboriginal justice and victimology.

Biagio (Bill) Marra - Member

Mr. Bill Marra is a graduate of the University of Windsor. He has worked in the criminal justice field since 1988. Mr. Marra is currently the Executive Director of an agency, which provides residential and nonresidential youth services for young offenders, at risk youth and foster care youth. He is very active in his community serving on several other committees/boards including as first vice-chair of a hospital board. From 1994 to 2003, Mr. Marra served as a member of city council in his home community. During his tenure on city council he served on over two-dozen committees, boards and commissions including as chairperson of the local police services board. Mr. Marra was also very active at the national level as a five-year board member of the Federation of Canadian Municipalities where he chaired two national standing committees related to community safety, corrections and national parole.

Hyacinthe Miller - Member

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller has been a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement.

Krishan D. Uppal, B.A, B.T, MSW – Member

Mr. Uppal studied extensively in India and Europe. He has had a distinguished career in community work and public service. He is the recipient of the Queen's Golden Jubilee Medal, the Governor General's Medal and the Ontario Ministry of Citizenship's Outstanding Achievement Award in recognition of his significant contribution to compatriots, Aboriginal Peoples and to Canada. Mr. Uppal has served on numerous boards and commissions, and, also as President of the India-Canada Association and the National Association of Canadians of Origins in India, Ottawa Chapter. He is retired from the federal Public Service of Canada and lives in Eastern Ontario.

Report on the Outreach and Community Information Activities for 2006

Over the past year, the Outreach Team has concentrated on the implementation of the final two phases of the Outreach Strategic Plan. Our goals focused on public information sessions and improved communication.

Public and Community Awareness

From the inception of the Outreach Program, our thrust has been toward building bridges through education and improved communication. The Outreach Team strives to give the public and police stakeholders a greater understanding of the Commission's mandate and legislative functions.

2006 saw the Outreach Team continuing its established contacts and working relationships with a wide range of ethno-cultural groups. Extensive contacts have been maintained with local community associations and agencies. For example, the Outreach Team has ongoing relationships with the North York Committee on Race Relations, Toronto Residence in Partnership, Metro West Court and Seneca College School of Legal and Public Administration and Resolution, Equity Diversity Centre.

These efforts over the past year have further publicized the mandate of the Commission and the Public Complaints System, and continued our collaboration with police stakeholders and community groups.

The following are some of the groups the Commission worked with to spread information about its mandate: Scarborough Boys and Girls Club, Hamilton Police Service, Hamilton Res Q Youth, South Asian Legal Clinic – Toronto, ICAN International Social Agency – Scarborough, Jane and Finch Concerned Citizens – North York, AMO Conference – Ottawa, Chinese New Year – Scarborough, Law in Fairview Mall — North York, Law in Peanut Plaza – North York, Black History Month Celebration – North York, Jamaican Canadian Association – North York, Trinidad and Tobago Association – North York, Canadian Federation of St. Kitts Nevis – North York, Dr. Eugene Rivers – Scarborough, Chinese Police Liaison Conference – Scarborough, Malvern Community Centre – Scarborough, Guelph Humber University, Seneca College – North York, Parkdale Intercultural Association – Toronto.

Our work with these groups enabled us to improve our visibility and participate in various community events. In particular, our work with the organizers of "Law in the Mall", "Law in the Community" and "Mock Court" attracted hundreds of diverse community members and students within the GTA and 905 areas who became familiar with our work. Our presence at various community events enabled us to highlight our website as a conduit for education and research resulting in a better appreciation of the Commission's mandate.

In addition to the groups listed above, we provided training and information to Scadding Court, legal clinics and schools.

Public information sessions continue to be one of the most successful initiatives of our Outreach Program. These sessions allow the public to see the "face" of the Commission and provide the Commission with an understanding of the issues facing the community and police stakeholders.

Mayors, councilors, politicians, lawyers, community leaders, activists and students of law regularly attend our public information sessions. During 2006, approximately 1500 people visited our booth at various community/police events throughout the Province.

We continue to distribute our "Who We Are and What We Do" brochures at community information sessions and provide them to organizations upon request. In addition, we regularly update our website which features upcoming events and photographs depicting various outreach activities.

2006 saw the publication of two issues of our newsletter "Staying In Touch". Readers who have spoken to us over the past two years agree that the newsletter has been a useful vehicle for providing information about the Commission.

Our vision for "Staying In Touch" was a publication in which stakeholders could write and contribute their ideas.

Our stakeholders tell us that "Staying In Touch" keeps them connected with us. We believe that publishing "Staying In Touch" for two years has set the stage for sustained bridge building with our various stakeholders.

Conclusion

The Outreach Program has generated considerable positive feedback about our role in the community.

In 2006 our Outreach Team made significant advances in educating the public about the work of the Commission and the Public Complaints System.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the Police Services Act provides that the Commission may at the Minister's request, a municipal council's request, a board's request or of its own motion, investigate, inquire into and report on:

- the conduct or the performance of duties of a police officer, a municipal chief of police, a special constable, a municipal law enforcement officer or a member of a board;
- the administration of a municipal police force;
- the manner in which police services are provided to a municipality; or
- the police needs of a municipality.

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for negative consequences for members, chiefs of police and police services boards found to be in non-compliance. Consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing those issues that were deemed to be of concern, but not falling within the parameters of a full-scale inquiry – the Fact-Finding review. This approach continues today.

In 2006, the Commission received six requests for section 25 investigations. Of the six requests, the Commission directed staff to conduct fact-finding reviews on four matters.

Three of the fact-finding reviews were with respect to allegations about the conduct or performance of duties of members of police services boards. None of these fact-finding reviews proceeded to formal section 25 investigations resulting in a hearing.

In two of the requests the Commission decided that the allegations did not rise to the level of serious to warrant invoking the extraordinary powers contained in section 25.

The third request is a matter that is ongoing.

Finally, the Commission concluded the penalty phase of a section 25 hearing commenced in 2005. A summary of this matter follows.

INQUIRY INTO THE CONDUCT OF DEPUTY CHIEF MICHAEL KINGSTON OF THE HALTON REGIONAL POLICE SERVICE

Presiding Members:
Peter J. Doucet, Member
Hyacinthe Miller, Member

Appearances:
John Gibson, Counsel, Deputy Chief Michael Kingston
Lorenzo D. Policelli, Counsel, Ontario Civilian Commission on Police Services

Heard:
December 12, 2005 and January 27, 2006

Date of Decision:
March 24, 2006

Summary of Reasons for Decision

Pursuant to s. 25 of the Police Services Act an investigation was undertaken into the conduct of Deputy Chief Michael Kingston. Following the investigation, the Commission directed that a hearing be held. Deputy Chief Kingston was charged with four counts of deceit, contrary to s. 2(1)(d) of the Code of Conduct. In the first three counts, he was alleged to have falsified an application for promotion to the positions of District Commander, Superintendent and Deputy Chief by falsely claiming to have a 3-year Bachelor of Arts (BA) degree from the University of Waterloo. These applications spanned a five year period. In the fourth count, he was alleged to have made the same false claim in relation to an official biography, prepared for his swearing-in ceremony as Deputy Chief and for use in official speaking engagements.

At the hearing, Deputy Chief Kingston pled guilty to the four charges of deceit. An agreed statement of facts was read, which revealed that Deputy Chief Kingston had been enrolled in various half-credit courses at the University of Waterloo, beginning in 1979 and continuing intermittently thereafter. He also had credits transferred from other academic institutions. Thus, although he may have had the 15 credits required for a BA degree from the University of Waterloo, he had never applied to have the degree conferred. Despite the fact that he had not obtained his BA degree, he stated that he had on his applications for promotion.

There was no evidence that his academic qualifications played any role in the success of his various applications for promotion; rather, he was considered a top candidate on the basis of other factors such as skill, ability and leadership. Deputy Chief Kingston had since enrolled in a police studies BA program at Georgian College; and he apparently stood to receive credit for the equivalent of a 3-year BA, so that he had already completed 75% of the requirements for the 4-year program at Georgian.

Counsel presented a joint submission, which highlighted several points: the fact that his misrepresentations did not give Deputy Chief Kingston a material advantage in the competitions; Deputy Chief Kingston's explanation for the falsification – he felt he had the equivalent of a 3-year BA and was attempting to have that recognized - and the Chief's strong endorsement of his Deputy, whom he described as retaining the trust of all levels of the service. The Commission also heard from the Board and the Chief that demotion or suspension of Deputy Chief Kingston would have an adverse impact on the service. Counsel submitted that, based on the lack of materiality, an appropriate penalty in this case would be the forfeiture of 5 days vacation for each of the four charges, with an additional penalty of five days for Deputy Chief Kingston's approval of the biography containing false statements. Also, counsel suggested that Deputy Chief Kingston be directed to complete the police studies BA program at Georgian College.

Held, Based on Deputy Chief Kingston's guilty plea, he was convicted on the four counts of deceit and the joint submission on penalty was accepted.

Section 25(4) of the Police Services Act stated that, if misconduct was proved on clear and convincing evidence, the Commission may direct any penalty or action in ss. (2) and (5) of s. 68, which included dismissal, demotion, suspension, forfeiture of days or pay, reprimand, a direction to undergo counselling, treatment or training, a direction to participate in a program or activity, or any combination of reprimand and direction. Penalties imposed in proceedings under s. 25 had been either dismissal or demotion in cases of serious misconduct. However, the misconduct in which Deputy Chief Kingston engaged was without precedent.

Nevertheless, the key factors in assessing penalty ought to apply. Added to these considerations were the special role played by a Deputy Chief, and the notion that with high rank and responsibility comes very significant accountability.

The first misrepresentation of academic credentials occurred in 1999, and each instance of that deceit thereafter represented a breach of ethics. Deputy Chief

Kingston had accepted responsibility for his actions, and acknowledged the seriousness of his misconduct. In terms of public interest, despite some concern the Commission had about Deputy Chief Kingston's ability to discipline others charged with disciplinary offences or his suitability to lead, his specific transgressions were not symptomatic of a serious character defect or future ability. There was no material gain involved in his misrepresentations, as he obtained his promotions on the basis of meritorious performance. He had a lengthy, unblemished employment record, the strong support of the Board and the Chief, very positive performance assessments, and the continued trust of all levels of the service. The actions of Deputy Chief Kingston were wrong, but his misconduct did not involve any dereliction of duty or serious malfeasance.

The Commission was not obliged to accept the joint submission on penalty, but in this case the proposal represented an appropriate balancing of the need for deterrence with the requirement for fairness. Accordingly, the Commission imposed a penalty of 25 days (total) of forfeited vacation, together with a direction to participate in the police studies BA degree program at Georgian College.

Section 116 Status Hearings

Municipal police forces in Ontario are composed of "members" who are appointed by local police services boards. Section 2 of the Police Services Act defines "members" to include both police officers and civilian employees.

The Act permits members to form associations for the purposes of collective bargaining. Normally, there are two associations. There is an association for officers and civilians and another for senior officers. Under section 115(2) chiefs and deputy chiefs are excluded from this scheme.

From time to time a dispute arises as to whether or not a particular member should be assigned to the local police association or senior officers association. Section 116 of the Act sets out a process to resolve such disagreements. It states:

> 116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
>
> (2) The Commission's decision is final.

There were two section 116 Status Hearings before the Commission during 2006. These were with respect to the status of members of the Cornwall Police Service. The full text of this section 116 decision can be found on the Commission's web site at www.occps.ca.

Police Service Restructuring (Section 40)

Section 40 of the Police Services Act allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force or reducing its size if the Commission consents and if the abolition does not contravene the Act.

When a municipality requests the approval of the Commission for the disbandment or downsizing of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment would be terminated if the proposal is accepted.

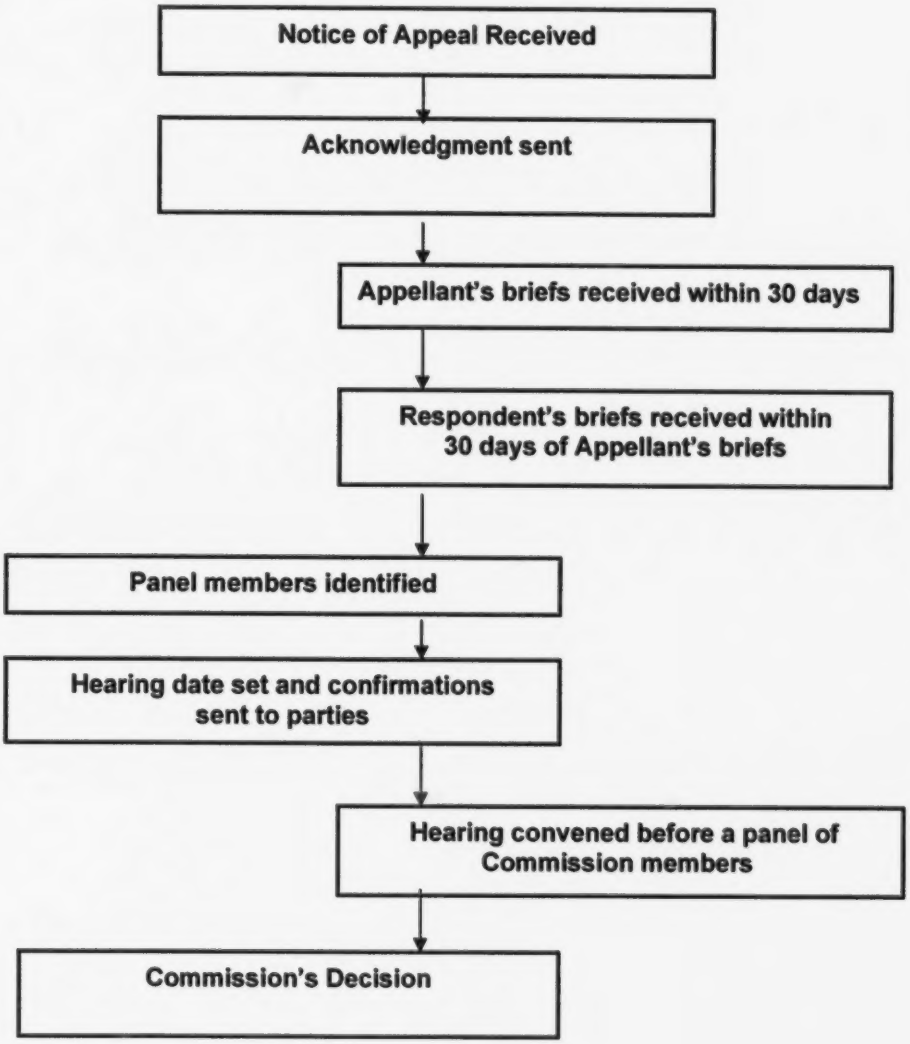
It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the Act. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement, for arbitration.

A public meeting is held to hear presentations and receive submissions. Following the completion of the meeting, the Commission renders a written decision.

There were three downsizing hearings in the calendar year 2006. They were held in the following municipalities: Michipicoten Township, Cobourg and Perth. The official text of these and previous restructuring decisions can be found on the Commission's web site at www.occps.ca or obtained through the Commission office.

Disciplinary Appeals

Appeal Process



Disciplinary Appeal Decisions

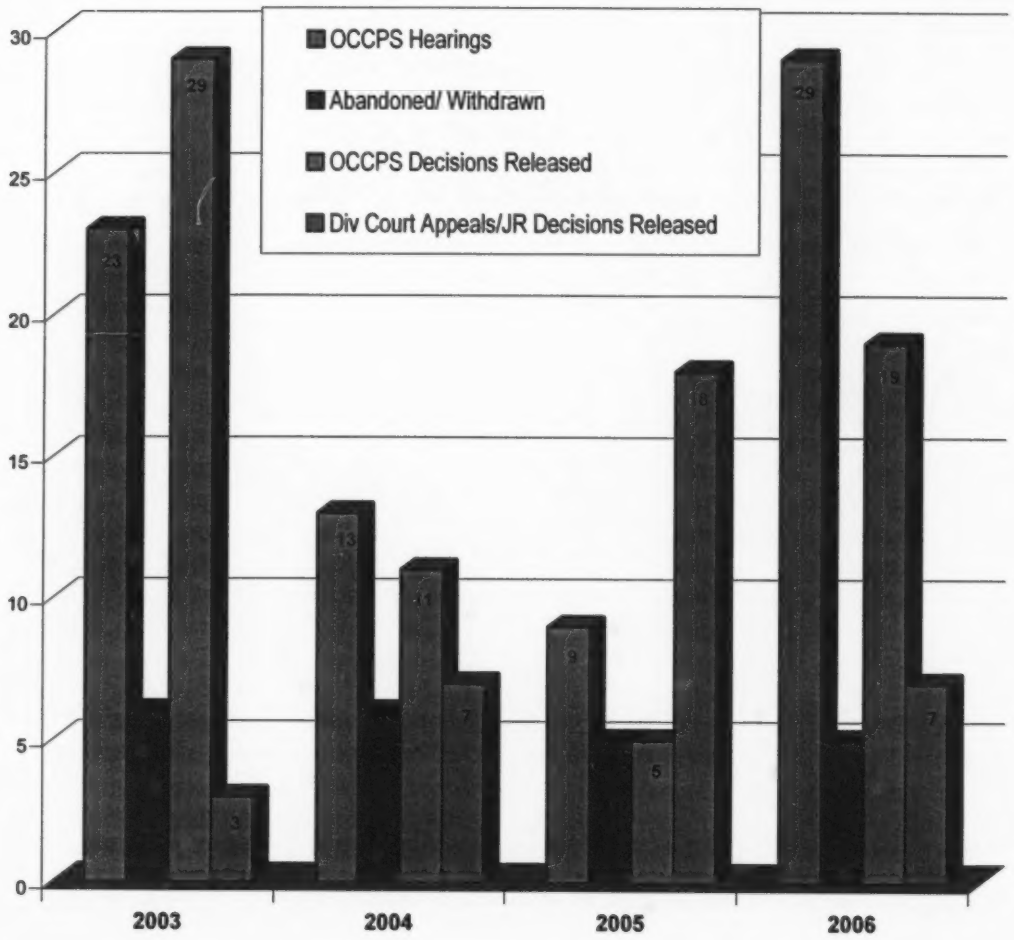
During 2006, the Commission heard thirteen disciplinary appeals

The following list identifies the appellant, respondent, the police service and the date and outcome of the decision. Summaries of these decisions are included in this report. The official text of the full decisions can be found on the Commission's web site at www.occps.ca

DATE	OFFICER/POLICE SERVICE	RESULT
February 8, 2006	Detective David Lang/Toronto Police Service	Appeal dismissed
March 9, 2006	Constable Steven Carson/Pembroke Police Service	Appeal dismissed
April 18, 2006	Fitzroy Masters/Constable Michael Kiproff and Toronto Police Service	Leave to Appeal granted pursuant to section 70(4) of the Police Services Act.
May 19, 2006	Constable Uldis Buks/Durham Regional Police Service	Appeal dismissed
June 1, 2006	Miles Whitney/Constable Neil Gonzalez and Ontario Provincial Police	Appeal dismissed
June 7, 2006	Constable Marcel Allen and Ottawa Police Service	Appeal dismissed
September 8, 2006	Constable Ahmed Ali Hassan/Peel Regional Police Service	Appeal dismissed
September 28, 2006	Constable Kevin Seamons/Durham Regional Police Service	Appeal dismissed
October 31, 2006	Sergeant Dalton Brown/Ontario Provincial Police	Appeal allowed
November 7, 2006	Constable Paul Wildeboer/Nicola Aylin and Toronto Police Service	Appeal dismissed

November 20, 2006	Constable Brandon Wilson/Ontario Provincial Police	Appeal dismissed
December 4, 2006	Susan Cole/Sergeant Paul Alarie and Ontario Provincial Police	No jurisdiction to proceed with appeal.
December 8, 2006	Robert Elliott/Constable Wayne King and Durham Regional Police Service	Appeal allowed

HEARING ACTIVITY CHART



Summary of Disciplinary Appeal Decisions

DETECTIVE DAVID LANG
Appellant

AND

TORONTO POLICE SERVICE
Respondent

Presiding Members:
Sylvia Hudson, Vice Chair
Dr. Tammy Landau, Member

Appearances:
Joseph A. Markson, for the Appellant
Robert Fredericks, for the Respondent

Heard:
January 18, 2006

Date of Decision:
February 8, 2006

Summary of Reasons for Decision

Detective Lang appealed the penalty imposed by the Hearing Officer, forfeiture of three days or twenty-four hours, following his plea of guilty to one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct.

Detective Lang joined the Toronto Police Service in 1980 and was promoted to Sergeant in 1989. He worked as an investigator in the service's Public Complaints Investigation Bureau for a four-year period from 1993-1997. His current assignment was with the Fraud and Forgery Squad. Following an acrimonious divorce and custody battle, he contacted the Canadian Firearms Centre, expressing concerns about his safety and the possession of firearms by his ex-wife's friend. The Halton Regional Police Service was assigned to investigate. The investigators concluded that there were no grounds to support a firearms license revocation. Detective Lang then filed a complaint with the Commission, alleging misconduct on the part of Halton police officers. The complaint was dismissed. Detective Lang made use of Toronto police resources while pursuing his public complaint, including telephones and a computer, as well as a Toronto police service envelope for submitting complaints to

the Halton service. He was charged with two counts of discreditable conduct, and pled guilty to one count (the other charge was withdrawn).

Counsel for the Appellant argued that the Hearing Officer erred by going beyond the agreed statement of facts and by failing to give due weight to the Appellant's personal circumstances, viz. his unblemished record, guilty plea and personal stress. Counsel submitted that the use of police resources was very limited, and that a reprimand was a more appropriate penalty. Counsel for the Respondent argued that the penalty was appropriate in light of the seriousness of the Appellant's misconduct. Counsel argued that the Hearing Officer did consider mitigating factors, but he was also entitled to take into account aggravating factors such as the repetitive nature of the conduct, the Appellant's position as a senior officer and the fact that he was previously assigned to the Complaints Bureau.

Held, Appeal dismissed.

As determined by the Hearing Officer, the Appellant's misconduct was serious. The Hearing Officer gave due consideration to the mitigating factors, but he was likewise entitled to consider the aggravating factors. In that regard, as a senior officer who had worked in complaints himself, the Appellant should have been aware of the conflict of interest he placed himself in, and the potential for damage to the reputation of the service. While there appeared to be no direct precedents (cases involving misuse of police resources), nevertheless the penalty imposed was not unreasonable or outside the range of available penalties. In the absence of any manifest error, and given the Commission's role as an appellate tribunal, there were no grounds for interfering with the penalty.

CONSTABLE STEVEN CARSON
Appellant

AND

PEMBROKE POLICE SERVICE
Respondent

Presiding Members:
Murray Chitra, Chair
Sylvia Hudson, Vice Chair
David Edwards, Member

Appearances:
Ian Roland, for the Appellant
Lynda A. Bordeleau, for the Respondent

Heard:
January 31, 2006

Date of Decision:
March 9, 2006

Summary of Reasons for Decision

Constable Carson appealed the penalty of immediate dismissal, imposed by the Hearing Officer, following his guilty plea to three counts of discreditable conduct, contrary to s. 2(1)(a)(ix) of the Code of Conduct.

At the time of the events giving rise to the disciplinary charges, the Appellant was under suspension and facing a criminal charge, for making a death threat to the boyfriend of his former spouse. He was convicted of threatening, received a suspended sentence and was placed on probation for 18 months. The criminal proceedings resulted in disciplinary charges, and the Appellant was demoted to fourth-class constable. On appeal to the Commission, that penalty was reduced to demotion to second-class constable for one year.

Events giving rise to the instant disciplinary charges were rooted in the Appellant's turbulent domestic situation with his fiancé, C, who was a fellow police officer. The Appellant was charged with several criminal offences in connection with this situation: forcible entry, unlawful confinement, assault and two counts of failing to comply with conditions. At trial he was convicted on the assault and breach of recognizance charges; the other charges were dismissed. The judge sentenced him to a total of

ten months imprisonment; but since he had already served five months pre-trial, the judge gave him credit for having served ten months, and he imposed a nominal sentence of one day imprisonment and twelve months probation. The Appellant appealed the convictions for assault and one breach of recognizance, as well as the sentences. The Court of Appeal confirmed the findings of guilt, but allowed the appeal against sentence. The Court set aside the convictions and substituted a conditional discharge with probation for twelve months.

As a result of the findings of guilt on the criminal charges, disciplinary proceedings were initiated. At his disciplinary hearing, the Appellant pled guilty to three charges of discreditable conduct. Portions of the Court of Appeal decision were read into the record. The Court noted that the trial judge found the complainant C's evidence not credible on many of the key events during the altercation which gave rise to the assault charge. In setting aside the convictions, the Court found that a sentence of incarceration was not warranted and would "preclude the appellant's continued employment as a police officer."

While recognizing the mitigating factors of a guilty plea and a prior record of excellent service, the Hearing Officer nevertheless found that the misconduct in question was repetitive, as well as sufficiently serious and damaging to the reputation of the service, that dismissal was justified. Indeed, in his view "The reputation of the service and the public trust demands it."

Counsel for the Appellant argued that the Hearing Officer misapprehended the findings of the Court of Appeal, exaggerated and mischaracterized the seriousness of the Appellant's conduct, and ignored relevant evidence. Counsel requested that the Commission substitute a period of demotion in place of the dismissal.

Counsel for the Respondent argued that the Hearing Officer's decision should be read as a whole rather than in microscopic fashion, that any mislabeling therein did not reflect a misunderstanding of the facts, and that the Commission should not interfere with the result.

Held, Appeal dismissed.

A disciplinary proceeding was distinct from a criminal trial, or a civil proceeding, in a number of respects. The Hearing Officer's decision was subject to examination in its own distinct context: as the product of an administrative tribunal of a labour relations nature. The Hearing Officer dealt with the employment consequences of the police officer's conduct; and the issue for the Commission, on appeal, was whether the resulting decision contained any manifest errors, whether the Hearing Officer ignored proper factors, or failed to fairly and improperly apply the factors relevant to assessing penalty. Absent some kind of manifest error in process or principle, the Commission would not interfere with the result.

Despite the use of some unnecessarily strong language, the Hearing Officer properly identified the Appellant's conduct as being serious in nature, contrary to the public interest, and warranting both deterrence and a significant penalty. The view that a second instance of criminal misconduct must automatically result in dismissal was not accurate, since the penalty might turn on a number of different factors.

The Hearing Officer did acknowledge the mitigating factors, but concluded that these were insufficient to outweigh reservations about the Appellant's rehabilitative potential and future usefulness as a police officer. With respect to the latter consideration, the impact of the findings of guilt appeared to have been overstated. Nevertheless, the concerns about rehabilitative potential were not misplaced. Even allowing for his turbulent domestic situation, Constable Carson committed four criminal offences within a period of ten months, which suggested poor judgment and difficulty with personal control - serious impediments to successful employment as a police officer. Furthermore, the offences were committed while he was under suspension and facing criminal charges for threatening. Given the protracted and public nature of the criminal proceedings, the reputation of the force had been discredited as a result of the Appellant's continuing criminal conduct.

Thus, notwithstanding the Court of Appeal's disposition of the criminal case against Constable Carson, in the context of a labour relations proceeding, and assessing the decision as a whole, it was open to the Hearing Officer to find that dismissal was an appropriate penalty.

FITZROY MASTERS
Appellant

AND

CONSTABLE MICHAEL KIPROFF AND TORONTO POLICE SERVICE
Respondents

Presiding Members:
David Edwards, Member
Hyacinthe Miller, Member

Appearances:
Marshall A. Swadron, for the Appellant
Robert Fredericks, for Toronto Police Service
Peter Thorning, for Constable Kiproff

Heard:
February 20, 2006

Date of Decision:
April 18, 2006

Summary of Reasons for Decision

The Appellant, Mr. Masters, appealed the decision of the Hearing Officer, finding that he was without jurisdiction to proceed with a disciplinary charge against the Respondent Constable Kiproff.

The Appellant was a supervisor at the York Detention Centre. On February 7, 2003 an altercation arose at the centre. Several officers attended. The Appellant and a young offender resident subsequently filed a complaint about the conduct of certain officers. The service investigated, and Constable Kiproff and his partner were both charged with two counts of misconduct. Notice of hearing was served August 5, 2003. The Appellant requested a review of the Chief's investigation. A panel of Commission members determined that Constable Kiproff's actions may also have constituted a violation of s. 2(1)(g)(i) of the Code of Conduct - unlawful or unnecessary arrest. On December 23, 2003 the Commission wrote to the Chief and directed him, pursuant to s. 72(8) of the Police Services Act, to proceed with this third charge, to commence the hearing process within 60 days, to advise the Commission of the hearing date and to provide a copy of the decision to the Commission.

Notice of Hearing was issued by the service with respect to the third charge on August 27, 2004 and was served upon Constable Kiproff on September 4, 2004, which was 256 days after the date of the Commission's direction.

Counsel for Constable Kiproff had previously filed a motion before the Hearing Officer, seeking a stay of the other two charges, alleging abuse of process. The motion was then expanded to include a request that the third charge be dismissed on the basis that it was not commenced within 60 days, as directed by the Commission. On April 19, 2005 the Hearing Officer issued his decision. He found that the direction by the Commission was mandatory, and that he lacked jurisdiction to proceed with the charge due to the failure to comply with the Commission's direction.

Counsel for the Appellant argued that the Commission had jurisdiction to hear the appeal, because the Hearing Officer's decision was final, rather than interim. The Commission should exercise its discretion to hear the appeal, because the complainant raised an important question of law. The Hearing Officer's decision that he lacked jurisdiction was erroneous, because there was no requirement in the Act for the Commission to specify time limits, merely the nature of the charge to be heard. Ontario Civilian Commission on Police Services v. Browne et al. (2001), 56 O.R. (3d) 673 (Ont. C.A.).

Counsel for the service supported the Appellant's position, adding that the main direction of the Commission was to proceed with the charge; the failure to honour the 60-day direction, or indeed any of the subordinate directions, could not result in a loss of jurisdiction.

Counsel for Constable Kiproff argued that the Hearing Officer's decision should be upheld. The Appellant's recourse lay with the courts by way of mandamus, rather than with the Commission; but if the Commission did find that it had jurisdiction to hear the appeal under s. 70(1), it should nevertheless decline to exercise its discretion under s. 70(4), on principles of fairness; and fairness to Constable Kiproff demanded adherence to the Commission's order.

Held, Decision revoked.

There were three issues before the Commission: Was the Hearing Officer's ruling a "decision made after a hearing" and therefore subject to appeal under s. 70(1)? If the appeal was properly brought under s. 70(1), should the Commission allow leave to appeal under s. 70(4)? If leave were granted, should the decision be confirmed, varied or revoked under s. 70(5)?

The Commission had previously found that there was no statutory right to appeal interim rulings, only final decisions. With respect to directed hearings, the Ontario Court of Appeal had concluded that an appeal lies under s. 70(1) pursuant to such an order and where a decision is made. Browne et al. The threshold question thus became whether the proceeding before the Hearing Officer was a "hearing" which

resulted in a "decision", which decision, according to the Divisional Court's recent statement in Gough and Peel Regional Police Service (Feb. 22, 2006) must be "final". The *Act* did not define "hearing" and "decision". Nevertheless, the proceeding before the Hearing Officer had all the indicia of a hearing: a motion was tabled, evidence was led, arguments made, and the Hearing Officer issued a document entitled "decision" which, inter alia, dismissed the third charge. Thus a hearing was held, and a decision issued. The Divisional Court in Gough confirmed the proposition that only final, not interim rulings may be appealed to the Commission. The Hearing Officer had ruled that he had no jurisdiction to proceed with directed disciplinary charges. This was a substantive issue, not a collateral matter, and it resulted in a disposition that was "final". Consequently, the Commission did have jurisdiction under s. 70(1).

As to whether the Commission should exercise its discretion and hear the appeal, the complaint brought by the Appellant was serious, the issue raised by the Hearing Officer was important, and it could have an impact on other directed hearings. Thus it was appropriate to grant leave to appeal.

The Commission's approach to findings of fact by hearing officers was typically deferential; however errors of law would cause the Commission to intervene. Section 72(11) was directory to the chief, but it did not limit or define the officer's rights, including the right not to be subjected to undue delay. Failure to comply with any of the four directions, including the direction to commence the hearing process within 60 days, might well constitute acts of misconduct; but this would not invalidate the Commission's direction to the Chief to proceed with the third charge.

Accordingly, the Hearing Officer did have jurisdiction to hear the third charge.

The issue of the prejudice suffered by Constable Kiproff, if any, as a result of the delay was a matter for the Hearing Officer to determine. In any event, there was no abuse of process by virtue of the delay.

The Chief of Police was directed to proceed with the third charge.

CONSTABLE ULDIS BUKS
Appellant

AND

DURHAM REGIONAL POLICE SERVICE
Respondent

Presiding Members:
David Edwards, Member
Biagio (Bill) Marra, Member

Appearances:
William R. MacKenzie, for the Appellant
Staff Inspector Brian Fazackerley, for the Respondent

Heard:
March 10, 2006

Date of Decision:
May 19, 2006

Summary of Reasons for Decision

Constable Buks, a first class constable with the Durham Regional Police Service, appealed the Hearing Officer's imposition of the penalty of demotion to second class constable for a period of six months, after the Hearing Officer found Constable Buks guilty on one charge of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct.

At issue was the appropriateness of this penalty, particularly when assessed against the principle of progressive discipline.

At the time of the incident leading to the charge, Constable Buks had 16 years of service with the force. He had no disciplinary history until 1999. In that year, an incident with a Mr. E. resulted in a disposition without a hearing. Mr. E commenced a lawsuit against Constable Buks and the service, which was settled upon a payment by the service, on a without prejudice basis. In 2002 Constable Buks was charged with one count of unlawful and unnecessary exercise of authority, following a confrontation with Mrs. H., the stepmother of an injured man whom Constable Buks had attempted to interview. Constable Buks pled guilty to the charge. The disposition of that charge was a joint resolution which included completion of a counselling program.

In August 2004 Constable Buks, while off-duty and driving his own vehicle, stopped Mr. P. for an alleged driving offence. He ordered P. to attend the police station, then issued him a notice for careless driving. The charge of discreditable conduct arose from Constable Buk's comment to P., that "if you decide to fight the charge, a dangerous driving charge could be laid".

The Hearing Officer concluded that this remark was an attempt to intimidate P. to plead guilty to the charge of careless driving. He viewed this as serious misconduct. He considered the Appellant's employment history. Acknowledging the Appellant's 14 years of discipline-free service, and also that it would be improper to consider the E matter, the Hearing Officer nevertheless determined that a significant penalty was warranted, since the Appellant appeared not to have grasped the fact that his "interaction with members of the public" was the "primary issue". The Hearing Officer thus imposed the demotion and requested that the Appellant complete the counseling program developed as a joint submission in the H. matter.

Counsel for the Appellant argued that the penalty was harsh and excessive, and was inconsistent with the principle of progressive discipline, since the demotion was preceded by a remedial measure only (counseling) as opposed to a punitive measure. Counsel for the Respondent argued that the Hearing Officer was entitled to consider the Appellant's entire employment history, including the non-punitive resolution in the H. matter, the more so because the Appellant had not in fact followed through with the counseling program.

Held, Appeal dismissed.

Abuse of power by a police officer was a serious matter; and the Hearing Officer properly regarded the Appellant's attempt to intimidate P. as serious misconduct.

The Hearing Officer considered the Appellant's employment history. He acknowledged the limitations on use of that past history (the E incident). Nevertheless he determined that a significant penalty was warranted because the Appellant had failed to grasp that his interactions with members of the public were the "primary issue". The Appellant's problematic interactions with the public were in fact the fundamental issue both in the H. matter and again in the instant case.

The Hearing Officer properly considered and applied the principle of progressive discipline, together with all of the other relevant sentencing factors. The resulting decision contained no manifest errors, and the penalty was not unreasonable or outside the range of available penalties.

MILES WHITNEY
Appellant

AND

CONSTABLE NEIL GONZALEZ AND ONTARIO PROVINCIAL POLICE
Respondents

Presiding Members:
Murray W. Chitra, Chair
Sylvia Hudson, Vice Chair

Appearances:
C. Justin Griffin, for the Appellant
Jinan Kubursi, for Ontario Provincial Police
Lorna E. Boyd, for Constable Neil Gonzalez

Heard:
March 2, 2006

Date of Decision:
June 1, 2006

Summary of Reasons for Decision

Miles Whitney appealed the decision of the Hearing Officer, finding that the Respondent Constable Gonzalez was not guilty of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct.

In May 2002 the Appellant and four friends went on a camping trip to Algonquin Provincial Park. The Appellant and two of the other campers were minors at the time. The campers brought along a quantity of alcohol and drugs.

On the first night park wardens warned the campers about excessive noise and drinking underage. Two adult relatives of the Appellant, described as "chaperones" or "guardians" to the under-aged young men, arrived late the first evening. On the second evening a confrontation arose between park wardens and the campers. A provincial offences notice was issued to one of the underage campers who was observed drinking, and the wardens demanded that any remaining alcohol be surrendered. The campers denied there was any, but eventually the Appellant produced a bottle of Bailey's. The chaperones left. The wardens demanded to search the two vehicles. One of the drivers consented, but the Appellant refused,

and was ticketed for using abusive language. The Appellant demanded that the police be called.

The wardens then informed the campers they were being evicted. They were told that they would not be permitted to drive from the campgrounds unless they were sober. One of the drivers volunteered that he may have had too much to drink to drive safely. The Appellant said that he did not drink, a statement he repeated to the Respondent when he arrived. However, at the disciplinary hearing the Appellant acknowledged that he had used the Bailey's that morning in his coffee as a sweetener.

When Constable Gonzalez arrived he was briefed by the wardens. He advised the Appellant and the other driver that the wardens had the authority to search their vehicles. Constable Gonzalez asked the Appellant and the other driver to sit in the back of his cruiser. The young men were not handcuffed. Later he returned and administered breathalyzer tests to both, without issuing a formal demand or advising the drivers of their right to counsel. The Appellant's reading was zero. The two young men were in the back of the police cruiser for approximately 30 minutes. Meanwhile, the wardens' search of the Appellant's vehicle had uncovered 33 bottles of beer, a partial bottle of vodka, a knife and drug accessories. One of the other three campers was arrested after Constable Gonzalez attempted to search him and he refused. A second camper was arrested after marijuana and magic mushrooms were discovered. The third camper was searched but nothing was found.

Subsequently, the Appellant filed a public complaint against Constable Gonzalez, and Constable Gonzalez was charged with discreditable conduct. Specifically, he was alleged to have breached the Appellant's right to be free from arbitrary detention and his right to counsel, under the Charter of Rights and Freedoms.

The Hearing Officer found that after the wardens evicted the campers, they were waiting for Constable Gonzalez to arrive to perform a breath test, for the sole purpose of determining whether the two drivers could drive safely from the park. Although the Appellant and the other driver testified that they weren't offered an explanation for the breath test or told what would happen if they didn't comply, the Hearing Officer found that both drivers knew the test was voluntary and had no criminal consequences. He concluded that there was no requirement to make a formal demand, no breach of the Appellant's Charter rights, and therefore that Constable Gonzalez was not guilty of discreditable conduct.

Counsel for the Appellant argued that the Appellant was detained in that he was prevented from leaving the park until an unnecessary breath test had been administered, and that he was forced to take the test, insofar as he believed that he did not have a choice. Counsel argued that the Hearing Officer's decision was erroneous and displayed bias against the Appellant and the other campers. Counsel for the OPP argued that the Hearing Officer's conclusion that the Appellant took the test voluntarily was reasonable and supported by the evidence. Accordingly there

were no breaches of the Appellant's Charter rights. Counsel for Constable Gonzalez argued that the Appellant's detention was not arbitrary; rather it occurred in the course of the administration of a voluntary breath test. The Hearing Officer properly found that no breach of Charter rights had resulted from the Respondent's actions, which instead would be viewed as professional and responsible by a reasonable person.

Held, Appeal dismissed.

If the Appellant had been detained and compelled to undergo a breathalyzer under the threat of criminal sanctions, and in the absence of Charter cautions, then the conduct of Constable Gonzalez would have been discreditable. However, the Hearing Officer found that this is not what occurred; instead, the Appellant faced no sanctions, and agreed to participate voluntarily. The Hearing Officer's conclusion that Constable Gonzalez was more credible was based not only on his observation of the witnesses, but also on inconsistencies in the Appellant's evidence: his statement that he didn't drink, yet his acknowledged use of Bailey's that morning; his failure to advise the wardens or Constable Gonzalez that the campers had adult chaperones on site; the Appellant's request to summon the police and his taking of the test without protest; and the Appellant's and the other campers' untruthfulness about the presence and use of alcohol and drugs.

Assessments of credibility were the Hearing Officer's domain. Given the evidence, it was reasonable for the Hearing Officer to conclude that misconduct had not been proved on a clear and convincing standard.

CONSTABLE MARCEL ALLEN
Appellant

AND

OTTAWA POLICE SERVICE
Respondent

Presiding Members:
Sylvia Hudson, Vice Chair
David Edwards, Member

Appearances:
Allan R. O'Brien, for the Appellant
Robert E. Houston, for the Respondent

Heard:
April 12, 2006

Date of Decision:
June 7, 2006

Summary of Reasons for Decision

Constable Allen appealed the penalty of a six-month demotion to second class constable. This penalty was imposed after Constable Allen pled guilty to one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct.

The events which gave rise to the charge occurred on December 1, 2004, during a visit from the President of the United States. Constable Allen had been assigned to security duty with respect to the President's arrival. He finished his assignment, and was driving his private vehicle when he hit a construction fence, causing damage to both the fence and his vehicle. He left the scene without reporting the accident. Constable Allen's license plate was found by a construction worker. An investigation by the service revealed that the vehicle had been uninsured since August 2003, and the registration had expired in February 2004.

Constable Allen pled guilty to the charges of driving without a validated motor vehicle permit and operating a vehicle without insurance, pursuant to the Highway Traffic Act. He was also charged with the disciplinary offence of discreditable conduct, to which he pled guilty.

Constable Allen had accumulated a disciplinary record in the three years preceding this incident, which consisted of: 1) convictions for discreditable conduct and neglect of duty, resulting in the imposition of performance related conditions; 2) missed paid duties, resulting in informal discipline, to be retained on record for 2 years, and 3) a

conviction for neglect of duty, resulting in the forfeiture of 8 hours pay.

Counsel for the Appellant argued that the Hearing Officer erred by concluding that the Appellant drove his uninsured vehicle prior to the day in question. Counsel argued that the Hearing Officer also erred by concluding that the Appellant failed to show remorse. Counsel further submitted that the penalty was excessive. Counsel for the Respondent submitted that the record contained no evidence of these alleged errors. He submitted that the penalty was neither unfair nor outside the appropriate range, considering the seriousness of the Appellant's misconduct.

Held, Appeal dismissed.

The Hearing Officer's conclusion about driving an unregistered, uninsured vehicle was confined to the Appellant's conduct on December 1, 2004; there was no evidence from the record and the decision that this conclusion included prior occasions as well.

The Hearing Officer observed that the Appellant displayed no evident signs of remorse during the proceeding. However, he did note the Appellant's guilty pleas to both the disciplinary charge and the Highway Traffic Act charges. While it might have been preferable to state clearly the mitigating effect of a guilty plea, the fact that he didn't do so, together with his passing comment on the Appellant's demeanor, did not negate the mitigating aspect of the guilty pleas or give rise to an error warranting intervention.

Considering the seriousness of the Appellant's misconduct, and the fact that this was the fifth disciplinary action against him in three years, the penalty was not excessive. The Hearing Officer did note the mitigating factors of the Appellant' eleven years of service and letters of appreciation; but he balanced those with the prior disciplinary record as well as other appropriate sentencing factors.

The choice of a six-month demotion thus reflected the principle of progressive discipline; and it was neither unreasonable nor outside the range of available penalties.

CONSTABLE AHMED ALI HASSAN
Appellant

AND

PEEL REGIONAL POLICE SERVICE
Respondent

Presiding Members:
Murray Chitra, Chair
Sylvia Hudson, Vice Chair
Garth Goodhew, Member

Appearances:
Julie Stanchieri, for the Appellant
Andrew Heal, for the Respondent

Heard:
June 30, 2006

Date of Decision:
September 8, 2006

Summary of Reasons for Decision

Ahmed Hassan appealed the penalty of dismissal in the absence of resignation within seven days, imposed by the Hearing Officer, following findings of guilt on three counts of misconduct. The Appellant pled guilty to two charges of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct, and was convicted on one count of corrupt practice, contrary to s. 2(1)(f)(v) of the Code.

At the time of the events leading to the charges, Constable Hassan had been employed with the Peel service less than two years, although he had four years of prior service with the Waterloo service. Constable Hassan was the only officer of Somali heritage on the force; and his picture was featured on the Service's recruitment poster.

On January 25, 2002 Constable Hassan flew into Lester B. Pearson International Airport with his two young children. They were flying from Kenya via Amsterdam. Constable Hassan was flagged for luggage inspection. He identified himself as a Peel police officer. At a secondary inspection he produced his police identification and said that he was in a rush because he had to get to work that day, which was not in fact true. During the inspection, customs officials found 219 grams of Cathinone (or "khat"), which he had attempted to transfer to a bag that had already been

inspected. Constable Hassan was arrested. During questioning, he claimed that the khat had been placed in his luggage by "Mohammed", who was seated next to him on the flight. A subsequent inquiry revealed that there was no such person on the flight.

Constable Hassan was charged by the RCMP with two counts of importing a controlled substance. He later pled guilty to the included offence of possession of a controlled substance. The other charge was withdrawn. He received a conditional discharge with probation for 12 months.

Constable Hassan was then charged with five counts of disciplinary misconduct, later reduced to three counts. He pled guilty to two charges of discreditable conduct, one arising from the importation of khat, the other from the finding of guilt on the criminal offence. A disciplinary hearing ensued for the third charge, corrupt practice.

The Hearing Officer found the Appellant guilty on the corrupt practice charge, and imposed the penalty of dismissal. In doing so, he noted the mitigating factors of the Appellant's positive (albeit brief) work record, character references, the guilty pleas, and Constable Hassan's positive contributions to the Somali and Muslim communities. However, he felt that these were outweighed by the egregious nature of the misconduct, which involved a number of ethical improprieties, damage to the reputation of the force, and lack of assurance that Constable Hassan appreciated and acknowledged the magnitude of his misconduct. In light of the aggravating factors, he concluded that rehabilitation and reform were not amenable options.

Counsel for the Appellant argued that the penalty was unduly harsh; that in the absence of direct evidence, the Hearing Officer substituted his own opinion about damage to the reputation of the service; that the Hearing Officer gave improper weight to several mitigating and aggravating factors; and that he erred in placing undue weight on deterrence without properly considering rehabilitation. Counsel for the Respondent disputed each of these assertions, and argued that the Hearing Officer made no error in imposing the penalty of dismissal. Counsel also referred to the Commission's deferential standard of review, in the absence of some manifest error on the part of a Hearing Officer.

Held, Appeal dismissed.

The Appellant's misconduct was properly characterized by the Hearing Officer as being serious, deliberate, and involving ethical improprieties. In fact the corrupt practice charge was one of the most serious charges in the Code, and it represented a substantial breach of trust.

The absence of direct evidence did not negate the Hearing Officer's conclusion that the Appellant's actions had damaged the reputation of the force. By pleading guilty to the charges of discreditable conduct, the Appellant acknowledged that his conduct was likely to bring discredit to the service. In addition, the test for conduct that was

discrediting was an objective one, based on reasonable community standards. In the absence of direct evidence, there was no reason why the Hearing Officer could not place himself in the position of a "reasonable person" in the community in order to assess the officer's conduct. Given his prominent and public profile as a "poster" officer, there was little doubt that the Appellant's conduct would harm the Service's reputation; and it would certainly impair the service's relationships with customs officials and the RCMP, especially if he remained employed by the Peel Regional Police Service.

The Hearing Officer correctly identified rehabilitation as a key factor. However, he concluded that the mitigating factors were outweighed by the aggravating factors, particularly since he was not convinced that the Appellant truly appreciated the seriousness of his offences. In cases involving disciplinary misconduct, a failure to take full responsibility is typically viewed as undermining rehabilitative potential. In light of these concerns, and the Hearing Officer's clear balancing of all the relevant factors, his conclusion that dismissal was the appropriate penalty was not unreasonable.

CONSTABLE KEVIN SEAMONS
Appellant

AND

DURHAM REGIONAL POLICE SERVICE
Respondent

Presiding Members:
Murray Chitra, Chair
Sylvia Hudson, Vice Chair
Hyacinthe Miller, Member

Appearances:
William MacKenzie, for the Appellant
Staff Inspector Brian Fazackerley, for the Respondent

Heard:
July 7, 2006

Date of Decision:
September 28, 2006

Summary of Reasons for Decision

Constable Kevin Seamons appealed the penalty imposed by the Hearing Officer of immediate dismissal, in the absence of his resignation within seven days. The penalty was imposed after Constable Seamons pled guilty to ten counts of misconduct, viz. six counts of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct; two counts of neglect of duty, contrary to s. 2(1)(c)(ii); one count of neglect of duty, contrary to s. 2(1)(c)(v) and one count of corrupt practice, contrary to s. 2(1)(f)(ii).

In October 2003 the SIU commenced a criminal investigation into Constable Seamons, arising from a complaint of sexual assault by C, a seventeen year old woman. No criminal charges were brought; however, the service continued with its disciplinary investigation.

When the SIU investigation was initiated, Constable Seamons was suspended from duty, and his locker was searched. Nine photographs of a pornographic nature were found, as well as three police batons.

Constable Seamons removed the photographs from the bedroom of the residence of "Jane Doe", during the course of a domestic violence investigation. Jane Doe testified that she was shocked, hurt and embarrassed when she learned that the pictures had been found in Constable Seamon's locker, and thereafter she "cringed" every time she saw a male police officer in uniform.

Regarding the three batons, one was a service issued baton which Constable Seamons had reported missing in 2001. He did not report the baton being returned to him. A second baton was unauthorized.

Most of the charges stemmed from Constable Seamon's relationship with C, between May and December of 2003. C's parents initially brought her to the Clarington Community Police Office, because they believed she might have stolen and used their credit card, and they requested that a police officer speak with her. Constable Seamons conducted an interview with C which lasted several hours, but he failed to submit any reports about the matter. Following this initial contact, he apparently maintained an ongoing relationship with C and her family. None of this was documented or authorized. He made numerous trips to the family home, transported C in his police vehicle without permission, allowed her to be present during more than one call, drove out of his patrol area with her, failed to submit an Attempt Suicide report in connection with a call about C, and left a Provincial Offences Act form, containing some inappropriate comments, on the windshield of the car of A, C's sister. Constable Seamons claimed that this last incident was intended to be a joke.

All of the incidents were admitted by Constable Seamons, hence the guilty pleas. However, his explanation for the ongoing contact with C and her family was that he was simply trying to follow the service's mission statement, to "reach out" to a troubled teenager. The Hearing Officer described this inappropriate relationship as essentially providing a "private police service" to C and her family. The Hearing Officer considered all of the factors bearing on sentencing. He characterized Constable Seamons' actions in relation to C as a breach of public trust. While he acknowledged that a guilty plea typically has a mitigating effect on penalty, in this case he viewed Constable Seamons' explanations as undermining rehabilitative potential, because the Appellant failed to appreciate the inappropriateness of his conduct.

The Hearing Officer also noted the existence of a prior disciplinary record, including a prior conviction for neglect of duty in 1994. In that case, Constable Seamons received a revolver that had been turned in for destruction, but instead of registering it or completing the required reports he kept it in his personal locker. In 1997 Constable Seamons pled guilty to a charge of discreditable conduct, after he pled guilty to a criminal charge of careless storage of a firearm. With regard to the instant disciplinary charges, in the view of the Hearing Officer the potential damage to the reputation of the service was "huge". Weighing all of the relevant factors, he concluded that dismissal was the appropriate penalty.

Counsel for the Appellant argued that the Hearing Officer erred in a number of respects: by failing to consider the penalty of demotion, by drawing negative inferences from character evidence, by overstating the seriousness of the misconduct and damage to the reputation of the service, by assigning insufficient weight to the guilty pleas and to positive employment history, and by improperly assessing rehabilitative potential. The Respondent argued that the Hearing Officer made no errors in principle, applied the relevant factors in assessing penalty, and imposed a penalty which was not outside the acceptable range, considering Constable Seamons' multiple disciplinary convictions and prior disciplinary history.

Held, Appeal dismissed.

The Hearing Officer had not mischaracterized the Appellant's conduct. The Appellant's actions were serious, contrary to the public interest and warranted both general deterrence and a significant penalty. The sheer number of convictions was striking. Because the majority of these occurred over a period of six months, the Hearing Officer concluded that Constable Seamons engaged in a deliberate course of behaviour, rather than isolated acts of poor judgment or mere failure to follow procedures. This was a reasonable conclusion to draw from the evidence before him.

With respect to the Jane Doe incident, the Appellant deliberately and without legal justification removed photos from Jane Doe's bedroom. His explanation for not returning them (despite at least one opportunity to do so) lacked credibility, and the Hearing Officer was entitled to reject it.

The Hearing Officer observed that the baton incident was consistent with the Appellant's prior conviction for failing to account for a revolver. Given the evidence, this was a fair conclusion.

Clearly, the Appellant undertook several activities with C that were either prohibited or questionable. It was therefore open to the Hearing Officer to conclude that the Appellant's failure to seek permission or to record his activities was more than simply benign omission.

Despite the guilty pleas, the Hearing Officer had strong reservations about the Appellant's potential for rehabilitation and continued usefulness as a police officer. The Appellant's conduct over a lengthy period of time reflected a pattern of poor judgment, faulty decision-making and a capricious approach to established procedures. Significantly, he failed to appreciate the inappropriateness of that conduct, so the Hearing Officer's concerns about rehabilitative potential were valid. The same concerns would also underscore the futility of imposing a demotion in place of dismissal. Moreover, it was a reasonable conclusion that if details of the allegations were made public, the damage to the reputation of the service would be "huge".

Although the Hearing Officer appeared to overstate the potential impact of the disciplinary convictions on the Appellant's ability to testify in future court proceedings, this statement did not rise to the level of an error that affected the decision as a whole. Overall, there were no errors in the Hearing Officer's decision that warranted interfering with his conclusions.

SERGEANT DALTON BROWN
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:
Murray W. Chitra, Chair
Noelle Caloren, Member

Appearances:
Lorna E. Boyd, for the Appellant
Jinan Kubursi, for the Respondent

Heard:
September 28, 2006

Date of Decision:
October 31, 2006

Summary of Reasons for Decision

Sergeant Brown appealed his conviction on one charge of neglect of duty, contrary to s. 2(1)(c)(ii) of the Code of Conduct.

Friday, May 30, 2003 was a rest day for Sergeant Brown. However, he was the on call Traffic Sergeant for the region until Monday. On call duty was described as a voluntary, unpaid responsibility. A training seminar, which Sergeant Brown had organized, had just concluded. Sergeant Brown picked up some borrowed ramps in North Bay and was in the process of returning them to Ottawa, using an OPP vehicle, when he was involved in an accident. As a result of that collision Sergeant Brown was charged with Following Too Close, contrary to the Highway Traffic Act. That charge was later withdrawn by the Crown.

Sergeant Brown had the vehicle's radio on and tuned to the Simplex channel. In accordance with OPP policy, since he was off duty he was not logged on with dispatch. Sergeant Brown did have his OPP cell phone and pager with him. Prior to the accident, the Communications Sergeant attempted, unsuccessfully, to telephone Sergeant Brown on his cell number and report a serious motor vehicle accident at Richard's Landing.

One minute after his accident, Sergeant Brown contacted the Provincial Communications Centre on his radio and advised the dispatcher that he had been in an accident. The dispatcher arranged for a supervisor to be sent, but did not alert the Communications Sergeant. Approximately one hour later, Sergeant Brown called the Communications Sergeant; he asked him to convey the information about his accident to Sergeant Brown's immediate supervisor, who was Commander of the region's Traffic and Marine Unit. That same afternoon, Sergeant Brown's supervisor heard about the accident from two other sources: the Appellant's wife, who was an Inspector with the OPP, and a Staff Sergeant. Sergeant Brown's supervisor informed the Chief Superintendent about the accident with the OPP vehicle and the charge under the HTA. The following Monday Sergeant Brown sent his supervisor an e-mail which included a description of the accident.

On October 27, 2003 Sergeant Brown was charged with one count of neglect of duty. He was alleged to have failed to notify the PCC supervisor that he would be out of the region and unavailable to attend any serious traffic related incidents, and also that he failed to report his own accident in a timely manner, contrary to policy order 6.16.10.

At the disciplinary hearing, Sergeant Brown testified that he was unaware of any policy or practice requiring the on call Traffic Sergeant to notify anyone prior to leaving the region; but in any case, his supervisor knew about the trip to Ottawa and had approved it. His supervisor testified that he was not aware that Sergeant Brown was out of the region, he didn't recall any conversations with Sergeant Brown to that effect, and that in his view policy 6.16.10 required timely personal notification. Although he knew about Sergeant Brown's accident on Friday, Sergeant Brown himself didn't inform him until Monday.

The Hearing Officer stated that there was a requirement for Sergeant Brown to report to his supervisor. He found that the allegations were substantiated on the evidence.

Counsel for the Appellant argued that the Hearing Officer made numerous errors, including his failure to understand that Sergeant Brown was available to perform on call duties, and that any gaps in communication were attributable to Centre staff, rather than the Appellant. Counsel for the Respondent argued that the conviction should stand; and that the length of the delay in receiving a response from Sergeant Brown was properly viewed by the Hearing Officer as constituting neglect of duty.

Held, Conviction revoked; appeal allowed.

The offence under s. 2(1)(c)(ii) could be established by proving that an officer left an assigned work place without authorization, or by proving that an officer failed to comply with orders. The first element could be countered by a claim that the officer had a reasonable belief that he or she had permission or other good excuse to leave; while the second element required some evidence of deliberateness or recklessness.

Neglect of duty was not an absolute liability offence, and mere failure to comply was not sufficient to substantiate the charge.

In this case, the Appellant was alleged to have committed both of these elements, although the Hearing Officer failed to clearly distinguish them.

On May 30th Sergeant Brown was not on duty, and thus was not assigned to work in a designated work area. As on call Traffic Sergeant, he was expected to be available to provide expert advice, direction and coordination; but it was agreed that, contrary to the suggestion in the Notice of Hearing, this did not require personal attendance at accident scenes.

There was a dispute in the evidence about the existence of orders requiring notification prior to leaving the region. There was also a conflict in the evidence as to whether, in any event, Sergeant Brown did notify his supervisor before departing for Ottawa. The Hearing Officer failed to address these fundamental evidentiary conflicts, and failed to make reasoned findings of credibility between Sergeant Brown and his supervisor. Such errors went to the evidentiary foundation of the conviction, the key legal elements of the charge and matters of credibility. Thus the Hearing Officer's conclusions with respect to the first element could not stand.

As for the second element, in the absence of any direction in policy 6.16.10 as to how notification was to take place, the requirement had to be construed in a reasonable manner. Sergeant Brown immediately notified the Centre after his accident; however this information was not conveyed up the chain of command, as required and expected. In addition, within one hour Sergeant Brown was in contact with the Communications Sergeant. Over the course of the afternoon his supervisor was advised three times about the accident. Under the circumstances, it could not be said that the Appellant willfully failed to meet the notification requirement. In fact, he provided notice at the first reasonable opportunity. Thus there was no factual foundation to sustain a conviction on the second element.

Since neither element was proved, the conviction could not stand.

CONSTABLE PAUL WILDEBOER
Appellant

AND

TORONTO POLICE SERVICE AND NICOLA AYLIN
Respondents

Presiding Members:
Murray W. Chitra, Chair
Biagio (Bill) Marra, Member

Appearances:
Peter M. Brauti, for the Appellant
Robert Fredericks, for Toronto Police Service
Kelley J. Bryan, for Nicola Aylin

Heard:
October 16, 2006

Date of Decision:
November 7, 2006

Summary of Reasons for Decision

Constable Wildeboer appealed the penalty of 18 days or 144 hours off imposed by the Hearing Officer, following his guilty plea to one count of insubordination, contrary to s. 2(1)(b)(ii) of the Code of Conduct.

Originally Constable Wildeboer was charged with two counts of insubordination, but at the disciplinary hearing this was amended to a single count.

The charge stemmed from a series of 13 unauthorized Canadian Police Information Centre (CPIC) queries which Constable Wildebor made over a period of ten months, between 2002 and 2003. The queries arose in the context of apparently acrimonious personal and business relationships. One of the subjects of his queries, Ms. Aylin, had standing at the disciplinary hearing, as she was a public complainant.

Constable Wildeboer had a prior disciplinary record, consisting of a conviction for discreditable conduct in 1996, after he failed a roadside breathalyzer test. The second infraction on his record was a loss of 8 hours in 2005, imposed at a unit level disciplinary proceeding, for improper storage of a service firearm.

At the disciplinary hearing the Prosecutor suggested a penalty of forfeiture of 10-15 days. Counsel for Constable Wildeboer suggested a penalty of 6-8 days. Counsel for Ms. Aylin did not take a position with respect to the appropriate number of days, but suggested a period of "CPIC probation", wherein Constable Wildeboer would be required to report any CPIC usage to his unit commander and to explain the purpose of any queries.

The Hearing Officer identified the misconduct as serious, and a breach of privacy rights which caused stress to members of the public. The Hearing Officer acknowledged the Appellant's lengthy record of service and achievement; but he noted that the prior discipline, which was similarly rooted in a personal (domestic) dispute, appeared to have had little impact in altering Constable Wildeboer's behaviour. The Appellant's misuse of CPIC was also contrary to routine orders. Thus in his view both specific and general deterrence were factors to be reflected in the penalty. He acknowledged the mitigating factor of the Appellant's guilty plea; but he also remarked on the damaging effect of Constable Wildeboer's actions on the reputation of the service, in the form of media coverage generated by the disciplinary hearing as well as the adverse impact on the complainants. The Hearing Officer also identified prior cases involving CPIC abuse.

Counsel for the Appellant argued that the Hearing Officer erred by ignoring the parties' joint submission with respect to penalty. Counsel for the Respondents both took the position that there was no joint submission, and no obvious errors in the Hearing Officer's decision. Counsel for Ms. Aylin reiterated her suggestion that Constable Wildeboer be placed on "CPIC probation".

Held, Appeal dismissed.

Since the three parties to the disciplinary proceeding took different positions with respect to penalty, there was clearly no joint submission for the Hearing Officer to consider.

As for the penalty which he did impose, the Hearing Officer's decision contained no obvious errors and no basis for the Commission's intervention. The Hearing Officer identified and balanced the relevant factors, such as nature and seriousness of the misconduct, rehabilitative potential and damage to the reputation of the service, as well as other mitigating and aggravating factors.

The Appellant's actions were not an isolated incident; they occurred over the course of 10 months, and involved 13 separate queries. Hence this was a course of conduct. Given the Appellant's disciplinary record, the Hearing Officer's comments with respect to specific and general deterrence were reasonable. As for prior decisions, the single count of insubordination reflected 13 unauthorized CPIC queries, so this case could not properly be compared to cases involving a single transgression reflected in a single count of discipline. Thus the penalty of 18 days was not outside the available range.

However, the suggestion of "CPIC probation" was outside the Hearing Officer's authority to direct under s. 68(5)(c) of the Police Services Act, although Constable Wildeboer's supervisor was free to increase his or her monitoring of Constable Wildeboer's CPIC usage.

CONSTABLE BRANDON WILSON
Appellant

AND

ONTARIO PROVINCIAL POLICE
Respondent

Presiding Members:
Dr. Tammy Landau, Member
Hyacinthe Miller, Member

Appearances:
Leo A. Kinahan, for the Appellant
Lynette E. D'Souza, for the Respondent

Heard:
September 18, 2006

Date of Decision:
November 20, 2006

Summary of Reasons for Decision

Constable Wilson appealed his conviction for the disciplinary offence of unlawful or unnecessary exercise of authority, contrary to ss. 2(1)(g)(i) and (ii) of the Code of Conduct.

The conviction arose from Constable Wilson's encounter with a male citizen, while Constable Wilson was patrolling in Barry's Bay on the evening of April 19, 2003. The facts underlying the incident were in dispute.

Constable Wilson observed a male, J. Yakabuskie and a female, V. Cowan, walking on a residential street. Constable Wilson maintained that the male shouted obscenities at him, while Mr. Yakabuskie and Ms. Cowan maintained that Mr. Yakabuskie yelled "Happy Easter" at Constable Wilson.

Constable Wilson stated that he stopped his vehicle and asked the man to identify himself, which Mr. Yakabuskie refused to do. Constable Wilson stated that he observed a strong smell of alcohol on the man's breath, and that his eyes were bloodshot and his speech slurred. Mr. Yakabuskie told Constable Wilson that he had only had one beer earlier that evening. Mr. Yakabuskie again refused to identify

himself; Ms. Cowan, however, urged Mr. Yakabuskie to cooperate and she gave Mr. Yakabuskie's name to Constable Wilson.

Constable Wilson stated that he feared the man's yelling and swearing would disturb people. He believed Mr. Yakabuskie to be intoxicated, and he told Mr. Yakabuskie that he was under arrest for failing to identify himself and for public intoxication under the Liquor License Act, R.S.O. 1990, c. L. 19 as amended.

Mr. Yakabuskie resisted arrest. Constable Wilson admitted striking Mr. Yakabuskie, although the number of times was in dispute, because in his view he thought Mr. Yakabuskie was going to assault him. During the struggle Constable Wilson said that he saw something black in Mr. Yakabuskie's hand that could have been a knife; but there was no knife.

Eventually Constable Wilson succeeded in handcuffing Mr. Yakabuskie. Ms. Cowan was upset and she asked Constable Wilson to take Mr. Yakabuskie home. Mr. Yakabuskie was transported to the detachment. Ms. Cowan, who was 5 months pregnant at the time, was left to make her own way home.

The charges against Mr. Yakabuskie were eventually either withdrawn or dismissed by the Crown. He and Ms. Cowan filed a public complaint against Constable Wilson, and Constable Wilson was also charged with the disciplinary offence of unlawful or unnecessary exercise of authority.

The Hearing Officer noted a number of inconsistencies in the evidence of the witnesses, and indicated that he was cautious about the weight he placed on their evidence as a result. In the end, he accepted significant portions of their testimony.

Counsel for the Appellant argued that the Hearing Officer failed to give cogent reasons why he believed or did not believe testimony, and he thereby erred in reaching his decision. In addition, Mr. Yakabuskie and Ms. Cowan had a previous encounter with the police, and on this occasion Mr. Yakabuskie was known to have lied, yet the Hearing Officer failed to take this into account when assessing credibility.

Counsel for the Respondent pointed out that assessments of credibility were the domain of Hearing Officers. In this case the Hearing Officer's decision contained no manifest errors; his reasons were sufficient, and were tied to the issue of credibility.

Held, Appeal dismissed.

The test for appellate intervention, per Williams and Ontario Provincial Police, was whether the adjudicator's conclusions were "void of evidentiary foundation". This test contemplated that the Commission's interference with evidentiary findings would be exercised sparingly.

Appeals to the Commission were based on the record, not on *viva voce* testimony. Looking at the record in this instance, it could not be said that the Hearing Officer's conclusions were void of evidentiary foundation.

Failure to identify your self was not a lawful ground for arrest under the Liquor License Act. Intoxication in public was a lawful ground for arrest. However, Mr. Yakabuskie did not display any of the classic signs of intoxication; and the Appellant could not clearly explain why he felt it necessary to arrest Mr. Yakabuskie, as opposed to taking him home or even to hospital, if he was in an advanced state of intoxication. Thus it was open to the Hearing Officer to conclude that the arrest was neither lawful nor necessary. And if the arrest itself was unlawful or unnecessary, then any force used in connection with the arrest was likewise improper.

The two citizens were evidently known to the police, and the Hearing Officer said that he was cautious about relying on their testimony, given the inconsistencies surrounding that testimony. However, in the end he accepted significant portions of their evidence on the essential matters. The Hearing Officer considered the evidence and he made clear findings of fact about Constable Wilson's demand for identification, about escalation during the encounter and about the ensuing roadside struggle. He clearly indicated that his decision was founded largely on credibility. Although brief, his reasons supported his conclusion that Constable Wilson's version of events was less credible.

SUSAN COLE
Appellant

AND

SERGEANT PAUL ALARIE AND ONTARIO PROVINCIAL POLICE
Respondents

Presiding Members:
David Edwards, Member
Hyacinthe Miller, Member

Appearances:
Marshall Swadron, for the Appellant
Jinan Kubursi, for the Respondent OPP
Gavin May, for the Ontario Provincial Police Assn.

Heard:
September 19, 2006

Date of Decision:
December 4, 2006

Summary of Reasons for Decision

This decision dealt with a motion concerning the Commission's jurisdiction to conduct a disciplinary appeal pertaining to a former police officer.

Ms. Cole, the Appellant, brought a public complaint against Sgt. Alarie, which resulted in disciplinary proceedings. On March 31, 2006 the Hearing Officer found that there was not clear and convincing evidence that Sgt. Alarie was guilty of discreditable conduct.

Ms. Cole filed a notice of appeal on April 27, 2006. Sergeant Alarie retired from the OPP on July 31, 2006.

Counsel for the OPP Association argued that the Commission had no jurisdiction to hear the appeal, because Mr. Alarie was no longer a police officer. Counsel for the OPP concurred, adding that the matter was moot since the Commission could impose no penalty against Mr. Alarie. Counsel for the Appellant argued that a live controversy existed between the parties, because this case raised important legal questions beyond those relevant to the parties, in particular, the proper standard of proof to be applied by a Hearing Officer.

Held, The Commission had no jurisdiction to proceed with the appeal.

Although Ms. Cole filed a timely appeal, the Commission's jurisdiction to hear appeals was limited by the provisions of the Police Services Act. The definitions provisions, under s. 2, defined "member of a police force", "police force" and "police officer" in terms of current status. The *Act* did not confer on the Commission the clear power to exercise disciplinary or appellate authority over former members. Mr. Alarie was no longer a police officer, no longer an employee, no longer a member of a police force, and no longer subject to the Code of Conduct.

With respect to the Appellant's concerns that the Hearing Officer's decision could have an impact on the entire disciplinary process, the Court of Appeal had recently confirmed that the principle of *stare decisis* does not apply to administrative tribunals (Ontario Provincial Police v. Favretto).

Given the constraints imposed by the Act, the Commission had no jurisdiction to proceed with this appeal.

ROBERT ELLIOTT
Appellant

AND

CONSTABLE WAYNE KING AND DURHAM REGIONAL POLICE SERVICE
Respondents

Presiding Member:
David Edward, Member

Appearances:
Sunil S. Mathai, for the Appellant
William R. MacKenzie, for Cst. King
Staff Insp. Brian Fazackerley, for Durham Regional Police Service

Heard:
September 26, 2006

Date of Decision:
December 8, 2006

Summary of Reasons for Decision

Robert Elliott appealed the decision of the Hearing Officer, in which he dismissed a charge of unlawful or unnecessary arrest against Constable King, pursuant to s. 2(1)(g)(i) of the Code of Conduct.

On September 21, 2002 the Durham Regional Police Service received a call regarding two young girls, who alleged that they were stopped while delivering newspapers, by a vehicle equipped with a loaded trailer. The driver asked the girls if they delivered newspapers to a specific address, to which they replied no. The girls alleged that the driver asked them to get into the vehicle so he could show them the address. The investigating officer advised Constable King that the vehicle had been located. Constable King attended at the residence, which was owned by Mr. Elliott. Constable King and Mr. Elliott had a conversation, which quickly turned into a physical altercation. Constable King then arrested Mr. Elliott for assaulting a police officer and assault with intent to resist arrest.

Mr. Elliott was acquitted of the criminal charges; but he filed a complaint with the service. The service investigated, and advised that no further action would be taken as the complaint was unsubstantiated. Mr. Elliott asked the Commission to review the service's decision. The Commission determined that there was sufficient

evidence to warrant a hearing into the allegation that Constable King made an unlawful or unnecessary arrest.

At the disciplinary hearing, Mr. Elliott testified that Constable King inquired whether he had asked the girls to get into his truck. Mr. Elliott denied that he had, and stated that he advised Constable King that the conversation was over. He stated that Constable King blocked the door so that he couldn't shut it; then Constable King entered the house, put a choke hold on Mr. Elliott, and arrested him.

Constable King testified that he went to the residence to conduct a "door knock" to obtain information about the incident. He stated that Mr. Elliott advised him the conversation was over and at the same time Mr. Elliott pushed him. He told Mr. Elliott he was under arrest, and a struggle ensued.

The two girls also testified at the hearing, stating that Mr. Elliott asked them if they wanted to get into his car to be shown his house.

The Hearing Officer dismissed the charge of unlawful or unnecessary arrest.

Counsel for the Appellant argued that the Hearing Officer erred by:

1) finding that Constable King was in the lawful execution of his duty when he entered the complainant's property;
2) alternatively, finding that the complainant did not explicitly tell Constable King to leave, prior to stating "this conversation is over";
3) in the further alternative, requiring the complainant to explicitly withdraw the implied consent to knock;
4) failing to consider the inconsistencies within Constable King's evidence; and
5) denying the complainant's request for an adjournment to prepare cross-examination of the girls.

Counsel for Durham Regional Police Service argued that the Hearing Officer dealt with the unlawfulness of the arrest in great detail.

Counsel for Constable King also dealt with the issue of Mr. Elliott's withdrawal of consent to knock. He pointed out that Mr. Elliott never verbally communicated his request that Constable King leave his property, prior to saying "this conversation is over". However, that statement occurred simultaneously with Mr. Elliott's contact with Constable King (pushing), which constituted an assault, which in turn allowed Constable King to enter the premises and arrest Mr. Elliott.

Held, Decision of Hearing Officer revoked; finding of guilt substituted.

The Appellant challenged the Hearing Officer's decision on five grounds. Three of these involved the common law principle of "invitation to knock". The Hearing Officer reviewed the jurisprudence surrounding this principle, particularly the Supreme Court of Canada's decision in Evans and Evans v. The Queen (1996), 104 C.C.C. (3d) 23.

With respect to the first ground, the Hearing Officer concluded that Constable King went to Mr. Elliott's residence with the intent of seeking information concerning an investigation, not with the intent of gathering evidence against the Appellant of an alleged criminal act. This finding was supported on the evidence.

With respect to the second ground, the Hearing Officer found that Mr. Elliott did not explicitly tell Constable King to leave his property, prior to stating "this conversation is over." This finding of fact was not unreasonable, and could be supported on the evidence.

However, the Hearing Officer did err at law when he required Mr. Elliott to explicitly withdraw the license to knock. The purpose of the license was to permit communication. The waiver of privacy rights embodied in the implied invitation was subject to revocation; and the central issue in this case was whether in fact Mr. Elliott did revoke his consent to Constable King being on his property. Contrary to the Hearing Officer's conclusion, revocation of consent could, in appropriate circumstances, be conveyed by means other than the use of specific words. This was one of those situations in which consent had been withdrawn by other means - viz., by demeanor. Constable King was aware from the outset that Mr. Elliott found his presence unwelcome. He ought to have known that any license was withdrawn, and he should have left the premises. When he failed to do so, Constable King became a trespasser. Consequently, his arrest of the complainant was unlawful.

With respect to the fourth ground of appeal, findings of credibility were the Hearing Officer's domain. The Hearing Officer did consider all the evidence, and he preferred Constable King's testimony to Mr. Elliott's testimony. This was a conclusion that he was entitled to reach.

With respect to the fifth ground, s. 69 of the Police Services Act directed the police service to disclose "physical and documentary evidence" to the police officer (subsection 5) as well as a complainant (subsection 6) prior to the hearing. This section did not impose an obligation upon the police officer to disclose his defense. Thus the Hearing Officer did not err in failing to grant an adjournment.

Since Constable King made an unlawful and unnecessary arrest, the decision of the Hearing Officer was revoked, and a finding of guilt was substituted. The parties were directed to provide written submissions with respect to penalty.

Appeals and Judicial Reviews Ontario Court Of Justice

The following is a list of Commission decisions that were subject to Judicial Appeal or Review where the courts rendered their decision in 2006. A full text of the Judicial Appeal or Review decisions can be obtained at: http://www.canlii.org/on/.

PARTIES	COURT	OUTCOME
Russell v. Ontario Civilian Commission on Police Services	Divisional Court	Application dismissed. Costs to Respondent fixed at $2,500.
The Corporation of the Canadian Civil Liberties Association and Roger Rolfe (Respondent/Applicant) and Ontario Civilian Commission on Police Services (Appellant/Respondent)	Court of Appeal	Appeal allowed. No order as to costs.

Public Complaints

Part V of the Police Services Act mandates the Commission as the review body for public complaint decisions made by chiefs of police and the Commissioner of the Ontario Provincial Police.

Complaints may be made about the conduct of a police officer (including the Chief of Police or Commissioner of the Ontario Provincial Police), the policies of a police service or the services provided by a police service. Only the individual directly affected can file a complaint and the complaint must be in writing and signed.

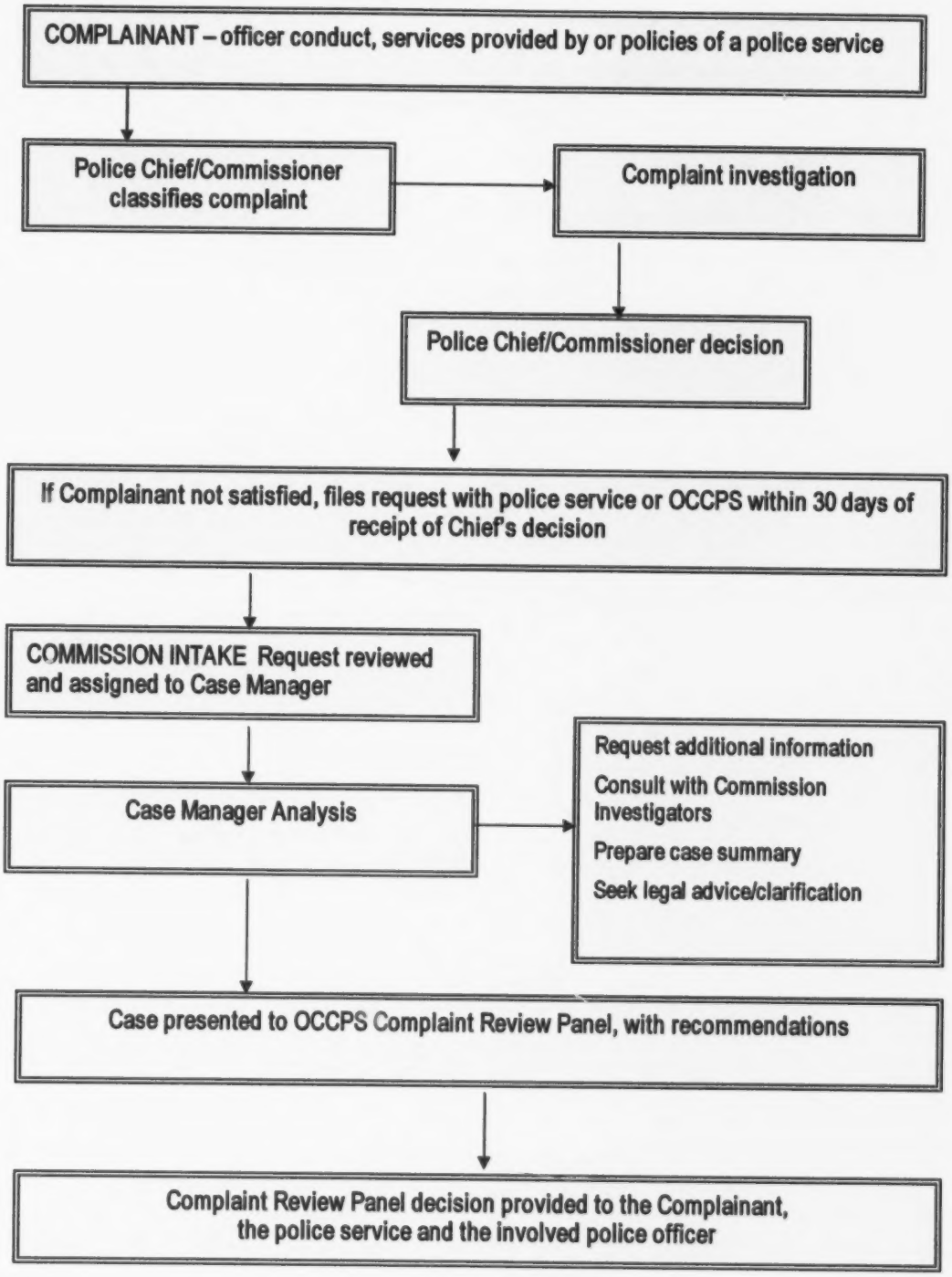
If the individual involved is not satisfied with the decision of the Chief of Police or Commissioner of the Ontario Provincial Police, the complainant has 30 days to write to the Ontario Civilian Commission on Police Service and request a review. To conduct the review, the Commission requests information from the complainant as well as the investigation file from the involved police service. Case Managers analyze each file and prepare a written case summary that is presented to a Review Panel composed of Commission members.

On review, the Commission may confirm the decision of the Chief/Commissioner or they may vary the decision. The Review Panel may vary the decision to less serious misconduct, direct a public hearing or return the file to the involved police service or another police service for further investigation.

In 2006, there were 2,613 public complaints filed against the 22,772 sworn police officers or their police services in Ontario. This represents a decrease in complaints made against the sworn police officers for 2005. During 2006, the Commission received 546 requests for review, a decrease of 23 requests from the previous year.

An overview of the complaints review process and a statistical summary of public complaints from 2002 to 2006 are contained on the following pages.

Overview of Public Complaints Process



Statistical Charts

The following four charts depict:

- The number of public complaints against police officers in Ontario for the period 2002 - 2006
- 2006 Police Service Complaints Activity
- Reviews requested by complainants for the period 2002 - 2006
- OCCPS review statistics 2002- 2006

PUBLIC COMPLAINTS AGAINST POLICE OFFICERS IN ONTARIO +
2002 - 2006

2002	**2,829**
2003	**2,845**
2004	**3,110**
2005	**2,868**
2006	**2,613**

+ Source: Police Services Self Reported

2006 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2005	TOTAL PUBLIC COMPLAINTS 2006 (NEW)	TOTAL PUBLIC COMPLAINTS – CONDUCT	TOTAL PUBLIC COMPLAINTS – SERVICE	TOTAL PUBLIC COMPLAINTS – POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR 2005	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	NOT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2006)
Amherstburg	30	8	9	9	0	0	0	0	4	1	0	3	1	0	0	0	1	8	0	0	0	0
Aylmer	13	0	1	1	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0
Barrie	187	31	34	30	3	1	8	12	6	1	5	3	3	4	8	8	3	5	2	0	0	6
Belleville	85	13	16	14	2	0	2	7	0	0	5	0	0	4	2	5	3	4	0	0	0	1
Brantford	150	23	25	23	1	1	6	4	1	8	2	5	3	1	4	3	4	9	1	1	1	2
Brockville	41	5	2	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2	0	0	0	0
Chatham Kent	167	15	30	25	4	1	2	0	8	11	5	1	0	5	5	5	6	7	0	3	0	3
Cobourg	31	8	2	2	0	0	0	1	1	0	0	0	0	0	0	0	0	1	1	0	0	0
Cornwall	88	11	16	16	0	0	1	0	3	10	4	0	0	0	6	0	1	7	0	0	1	1
Deep River	8	1	2	6	0	0	0	0	2	3	0	1	0	0	0	0	0	3	0	0	0	3
Dryden	20	1	2	2	0	0	0	0	0	0	1	0	0	1	2	0	0	0	0	0	0	0
Durham Regional	918	100	100	98	0	3	13	0	27	69	14	5	0	3	14	2	43	21	0	0	0	16
Espanola	11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	31	4	3	2	1	0	2	0	0	1	1	0	0	1	0	0	1	3	0	1	0	0
Gananoque	15	1	2	2	0	0	0	0	0	2	0	0	0	0	1	0	0	1	0	0	0	0
Guelph	176	17	14	12	2	1	2	4	2	0	3	3	0	3	3	3	4	3	0	0	0	1
Halton Regional	543	61	61	61	0	0	13	0	10	40	11	1	0	7	5	3	21	35	1	0	0	9

2006 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2005	TOTAL PUBLIC COMPLAINTS 2006 (NEW)	TOTAL PUBLIC COMPLAINTS – CONDUCT	TOTAL PUBLIC COMPLAINTS – SERVICE	TOTAL PUBLIC COMPLAINTS – POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	NOT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2006)
Hamilton	770	124	117	105	12	0	0	25	14	39	15	12	0	0	21	6	6	48	3	4	0	42
Hanover	14	8	4	4	0	0	3	1	0	1	3	1	0	1	1	0	1	3	0	0	0	2
Kawartha Lakes City of (formerly Lindsay)	38	2	4	4	0	0	0	0	0	3	1	0	0	0	0	1	0	3	0	0	0	0
Kenora	35	3	6	6	0	0	1	0	0	3	2	1	0	0	0	1	1	4	0	0	0	0
Kingston	188	26	25	20	3	2	5	6	5	2	7	3	0	0	2	2	0	13	2	0	5	5
LaSalle	33	6	2	1	0	1	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0
Leamington	41	11	2	2	0	0	0	1	0	0	1	0	0	0	1	1	0	0	0	0	0	0
London	583	89	81	78	2	1	4	7	16	18	22	7	1	7	18	14	6	31	8	3	1	4
Michipicoten Township	10	0	1	0	1	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0
Midland	26	2	6	6	0	0	0	1	0	0	3	1	1	0	1	0	0	1	0	0	0	4
Niagara Regional	679	106	82	81	0	1	16	20	19	10	26	3	0	11	1	6	11	40	0	1	0	21
North Bay	92	18	12	12	0	0	1	2	6	2	2	1	0	0	0	0	6	5	0	1	0	2
Ontario Provincial Police	5532	500	422	379	31	12	122	104	254	308	85	140	4	20	112	116	94	335	22	54	1	36
Orangeville	37	6	13	10	3	0	0	4	3	3	0	0	0	3	2	4	2	2	0	1	0	1
Ottawa	1251	233	204	202	2	0	73	0	6	170	26	0	0	0	30	21	76	70	1	4	0	73
Owen Sound	39	3	2	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1	0	0	0	1
Oxford Community	79	7	3	3	0	0	4	0	1	0	1	0	1	0	1	1	0	0	1	0	0	4
Peel Regional	1699	160	130	130	3	0	48	46	3	0	48	8	0	0	2	82	8	35	2	2	0	36

2006 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2005	TOTAL PUBLIC COMPLAINTS 2006 (NEW)	TOTAL PUBLIC COMPLAINTS – CONDUCT	TOTAL PUBLIC COMPLAINTS – SERVICE	TOTAL PUBLIC COMPLAINTS – POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	NOT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2006)
Pembroke	29	2	7	7	0	0	0	3	0	0	0	0	0	0	0	0	4	3	0	0	0	0
Perth	15	3	2	1	0	1	0	0	0	0	0	1	0	0	0	2	0	0	0	0	0	0
Peterborough Lakefield	123	25	33	33	0	0	1	0	16	16	2	0	0	0	6	2	4	5	7	4	0	5
Port Hope	25	1	1	0	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0
Sarnia	111	25	11	10	1	0	6	0	4	2	4	1	0	0	0	0	6	11	0	0	0	0
Saugeen Shores	23	0	4	4	0	0	1	0	3	1	0	0	1	0	0	0	1	1	0	0	0	2
Sault Ste. Marie	136	19	21	20	1	0	4	4	6	1	4	5	0	1	1	2	0	10	1	0	0	7
Shelburne	10	0	1	1	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0
Smiths Falls	24	2	6	6	0	0	1	1	2	1	1	0	0	1	1	1	1	2	0	0	0	2
South Simcoe	72	7	7	4	2	1	1	0	2	2	2	1	0	0	1	0	0	4	2	0	0	0
St. Thomas	60	8	10	10	0	0	0	3	3	1	0	3	0	0	2	0	2	5	0	0	0	1
Stirling Rawdon	9	1	1	0	0	1	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0
Stratford	53	6	5	5	0	0	1	1	0	0	2	1	0	1	3	0	0	1	0	0	1	0
Strathroy Caradoc	30	0	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0
Sudbury Regional	255	54	71	70	1	0	22	8	16	13	9	11	0	14	13	1	27	12	1	1	0	16
Temiskaming Shores (formerly New Liskeard)	10	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Thunder Bay	222	40	39	38	0	1	0	2	7	6	112	11	0	0	23	0	2	11	0	0	0	2
Timmins	84	21	22	21	1	0	0	3	3	3	9	0	4	0	4	5	0	8	1	0	0	5
Toronto	5406	772	659	455	7	4	211	114	99	118	82	32	0	10	193	51	94	137	7	0	0	177

2006 Police Services	Total Officers subject to Part V	TOTAL PUBLIC COMPLAINTS 2005	TOTAL PUBLIC COMPLAINTS 2006 (NEW)	TOTAL PUBLIC COMPLAINTS – CONDUCT	TOTAL PUBLIC COMPLAINTS – SERVICE	TOTAL PUBLIC COMPLAINTS – POLICY	PUBLIC COMPLAINTS CARRIED FROM PREVIOUS YR	ALLEGATIONS - Incivility	ALLEGATIONS - Neglect of Duty	ALLEGATIONS - Discreditable Conduct	ALLEGATIONS - Excessive Use of Force	ALLEGATIONS - Exercise of Authority	ALLEGATIONS - Unsatisfactory Work Performance	ALLEGATIONS - Other	OT DEALT WITH (Section 59)	RESOLUTION - Informal (Conduct)	WITHDRAWN	UNSUBSTANTIATED	INFORMAL DISCIPLINE	HEARING	LOST JURISDICTION	OUTSTANDING INVESTIGATIONS (December 2006)
Waterloo Regional	682	55	69	67	0	2	22	0	26	46	32	13	0	5	11	45	2	18	2	0	0	13
West Grey (formerly Town of Durham)	20	14	4	2	2	0	0	1	0	0	0	2	1	0	0	0	2	1	1	0	0	0
West Nipissing	20	1	1	1	0	0	1	0	0	1	0	1	0	0	0	0	1	1	0	0	0	0
Windsor	456	88	87	76	10	0	18	44	27	26	34	8	0	10	7	35	13	16	2	1	5	25
Wingham	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
York Regional	1229	119	116	114	1	1	41	26	19	28	26	15	0	0	12	27	21	11	1	0	2	40
Services disbanded during 2006																						
None																						
TOTALS	22772	2867	2613	2291	97	36	656	455	628	971	613	307	20	115	520	1040	481	960	69	91	17	568

REVIEWS REQUESTED BY COMPLAINANTS ** 2002 – 2006

2002	466
2003	488
2004	562
2005	569
2006	546

***Source: Ontario Civilian Commission on Police Services*

OCCPS REVIEW STATISTICS
2002 - 2006

	2002	2003	2004	2005	2006
Total Complaints Reported in Ontario*	2814	2845	3110	2868	2613
Reviews by OCCPS	**466**	**488**	**562**	**569**	**546**
Decisions Varied:	91	85	126	128	110
% Varied	20%	17%	22%	22%	20%
Hearings Ordered	19	30	18	14	13
Less Serious Misconduct	8	5	13	4	8
Further Investigation	39	31	67	74	61
Varied Classification	25	19	28	33	28
Less Serious to No Misconduct				3	

*As self reported by Police Service

First Nations Policing

The Constitution Act, 1867, assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including First Nations.

In 1975, the Task Force on Policing lead to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54 of the Police Services Act, states that, "with the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specific duties" and further, "if the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's governing authority or band council."

First Nations Police are responsible for enforcing provincial and federal laws and band bylaws in First Nations Territories.

In 2006, there were in excess of 400 First Nations Constables serving in Ontario. The Commission approved 73 First Nations Special Constable appointments in the calendar year 2006.